

Penerapan *Indirect Evidence* (Bukti Tidak Langsung) Dalam *Chocolate Confectionary Case* untuk Membuktikan Kartel dari Perspektif Sherman Act §1 dan Peraturan KPPU Nomor 1 Tahun 2019

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ABSTRAK

Penelitian dalam penulisan hukum ini bertujuan untuk menganalisis perbandingan praktik penerapan *indirect evidence* dari Hukum Persaingan Usaha Amerika Serikat melalui *Chocolate Confectionary case* untuk penerapan dan pengaturan *indirect evidence* di Indonesia. Penelitian ini melihat bagaimana penerapan *indirect evidence* dalam *Chocolate Confectionary case* dapat menjadi aplikatif dalam Hukum Persaingan Usaha di Indonesia sesuai dengan Peraturan KPPU Nomor 1 Tahun 2019.

Metode penelitian yang digunakan dalam penelitian ini adalah metode yuridis-normatif dengan pendekatan kualitatif. Penelitian ini menggunakan pendekatan perbandingan perundang-undangan dan pendekatan kasus. Bahan hukum primer yang digunakan berupa Sherman Act §1 dan Peraturan KPPU Nomor 1 Tahun 2019, dan bahan hukum sekunder yang terdiri dari buku-buku referensi, pendapat para ahli, dan jurnal hukum atau hasil penelitian yang berkaitan dengan masalah yang diteliti.

Hasil penelitian ini berisi: **Pertama**, terdapat perbedaan penerapan *indirect evidence* di Indonesia dengan Amerika Serikat, di mana penerapan *indirect evidence* di Indonesia secara normatif berfokus kepada Pasal 57 ayat (3) dan ayat (4) Peraturan KPPU Nomor 1 Tahun 2019 yang berupa bukti ekonomi dan bukti komunikasi, di mana penerapan *indirect evidence* di Amerika Serikat lebih praktis karena berfokus kepada tindakan yang dapat menghambat persaingan usaha di pasar sesuai dengan Sherman Act §1. **Kedua**, penerapan *indirect evidence* dalam *Chocolate Confectionary case* memenuhi persyaratan yang diatur dalam Peraturan KPPU Nomor 1 Tahun 2019 melalui bukti ekonomi dan bukti komunikasi, yang membuktikan bahwa penerapan *indirect evidence* di Indonesia sudah cukup praktis untuk membuktikan praktik kartel dan/atau penetapan harga.

Kata Kunci: *Indirect Evidence*, Kartel, Penetapan Harga, Persaingan Usaha Tidak Sehat

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Application of Indirect Evidence to Prove Cartel Practice from the Perspective of Sherman Act §1 and KPPU Regulation 1/2019

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ABSTRACT

The study in this research aims to analyze the comparison on application of indirect evidence from the Competition Law of United States of America through *Chocolate Confectionary case* to apply and stipulate the application of indirect evidence in Indonesia. This study identifies the application of indirect evidence in *Chocolate Confectionary case* to be applicative in the Competition Law of Indonesia in accordance with the KPPU Regulation No. 1 of 2019.

The research method in this study uses the juridical normative approach with a qualitative approach. This study uses a legislation-comparison and case approach. The primary legal materials being used in this study are the Sherman Act §1 and KPPU Regulation No. 1 of 2019, alongside with the secondary legal materials which consist of books, expert opinions, and legal science articles or research pertain to the researched problems.

The following results of this study are: **Firstly**, there are differences on the application of indirect evidence in Indonesia and United States of America, in which the application of indirect evidence in Indonesia normatively reliant on the Article 57 paragraph (3) and paragraph (4) of KPPU Regulation No. 1 of 2019 in form of economic evidence and communication evidence, whereas the application of indirect evidence in United States of America is more practical as it focuses on actions which may hinder business competitions in the market in accordance with the Sherman Act §1. **Secondly**, the application of indirect evidence in *Chocolate Confectionary case* fulfills the prerequisites as stipulated under KPPU Regulation No. 1 of 2019 in form of economic evidence and communication evidence, which shows that the application of indirect evidence in Indonesia has been sufficiently practical to prove cartel and/or price-fixing.

Keywords: Indirect Evidence, Cartel, Price Fixing, Unfair Competition

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